however, remains that he did die much earlier and, in the circumstances, both logic and a realistic approach demand that damages under these heads should be proportionately reduced, more so in the case of loss of amenities of life than perhaps in the case of pain and suffering.

In my opinion, an award of $10,000 general damages under the head of pain and suffering would be a reasonable one.

It is the assessment of damages under the second head which causes some difficulty because, apart from a reduction of damages which would be justified by his premature demise, there is also little evidence to indicate the full extent of his inability to pursue the activities he pursued beforehand as a result of the residual disabilities described by Dr. Fung.

In my view, an award of $5,000 would be adequate, if not generous, under this head.

The appeal is accordingly partially allowed to the extent that the assessment of general damages at $20,000 will be reduced to $15,000. The total amount of general and special damages will accordingly be reduced from $25,338 to $20,338. As the appellant's liability is only two-thirds of this amount, the judgment which was entered in the sum of $16,892 for the respondents against the appellant will be altered to one for $13,559.

Wee Chong Jin C.J. and **Tan Ah Tah F.J.** concurred.

Appeal partially allowed.

Solicitors: *Donaldson & Burkinshaw; J. Tan Chor-Yong & Co.*

GAN POH CHYE v. PUBLIC PROSECUTOR

[A.Cr.J. (Winslow J.) March 15, 1968]
[Singapore — Magistrate's Appeal No. 204 of 1967]

Criminal Law — Vagrancy — Suspected person — Meaning of — Act antecedent to, and act occasioning the arrest — Dividing line — Vagrancy Ordinance (Cap. 125), s. 4(k).

Evidence — Quantum of proof in criminal cases.

In prosecutions under section 4(k) of the Vagrancy Ordinance (Cap. 125). magistrates should learn to draw the dividing line between the antecedent conduct which causes a person to be a suspected person, and the act which amounts to loitering with intent. Whether a dividing line can be drawn depends on the particular facts of each case which must be scrutinised with utmost circumspection and care.

The appellant was charged under section 4(k) of the Vagrancy Ordinance of being a suspected person found loitering with intent to commit theft. A police officer saw the appellant and a companion driving at 1.15 a.m. into a car park in which were many parked cars. The companion got out of the car and looked into the parked cars. He tried to open the doors of three cars. He waved to the appellant, whereupon the appellant walked towards his companion and stopped to talk to him. The appellant looked into all the cars and started meddling with the door of a car. The police officer saw him with a screw driver in his hand at work over a car door.

Held: before a person can be convicted under section 4(k) of the Vagrancy Ordinance, there must be some antecedent act which brings the person into the category of being a suspected person. The act must be separate and distinct from the act relied upon as evidence of loitering with intent. In the particular circumstances of this case the appellant's response to his companion's signal made him a suspected person, and his act of loitering with intent began when he started looking into the cars. However, as the record showed that the magistrate had not been satisfied beyond reasonable doubt of the appellant's guilt, the appeal must be allowed.

Observation on the quantum of proof required in criminal cases.

Cases referred to:—

(1) *Partap Singh* v. *R.* [1954] M.L.J. 144.
(2) *Hartley* v. *Ellnor* (1917), 86 L.J.K.B. 938.
(3) *Ledwith* v. *Roberts* [1937] 1 K.B. 232.
(4) *Rawlings* v. *Smith* [1938] 1 K.B. 675.
(5) *Cohen & Anor.* v. *Black* [1942] 2 All E.R. 299.
(6) *Pyburn* v. *Hudson* [1950] 1 All E.R. 1006.
(7) *Cosh* v. *Isherwood* [1968] 1 All E.R. 383; (1967), 111 S.J. 906.

MAGISTRATE'S CRIMINAL APPEAL.

M. N. Samy for the appellant.

K. S. Rajah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Winslow J.: This appeal raises two substantial grounds of dissatisfaction with the magistrate's conviction of the appellant on a charge under section 4(k) of the Vagrancy Ordinance (Cap. 125) that he, at about 1.30 a.m. on 19th June, 1967 at Jalan Novena Barat, being a suspected person, was found loitering with intent to commit a seizable and non-bailable offence, to wit, theft.

The first of the two grounds is directed to a misdirection in law as to the quantum of proof required before an accused person can be convicted. The magistrate, in his grounds of decision, was of the opinion that the story related by the accused was unlikely to be true.

The second ground is directed towards the question whether the appellant was, in fact, a suspected person who had been found loitering with intent to commit theft, on the facts proved by the prosecution.

The learned deputy public prosecutor conceded, with regard to the first ground about the finding that the accused's story was unlikely to be true, that the magistrate should have gone further into the matter by deciding whether this story raised a reasonable doubt in his mind as to the guilt of the appellant on the charge preferred against him.

I am not at all satisfied that he applied his mind correctly to the measure or standard of

proof required to prove a criminal charge. The language in which he has couched his decision is reminiscent of the standard applied in civil cases. Even in dealing with the evidence of the principal prosecution witness, a police officer who made the original arrest, he does not make a positive finding that he believed his version as against the appellant's accusation that he had been assaulted by that officer. One of his reasons for finding that the appellant's story is unlikely to be true is that "it is quite unlikely that a police officer should assault anyone without any apparent reason". A criminal case should not be approached on the basis of which version is more likely to be true or untrue but on whether the prosecution has satisfied the court on the case as a whole as to the appellant's guilt beyond reasonable doubt.

Out of deference to the learned deputy public prosecutor's earnest request for a written judgment on the ground that there is a dearth of local authority on the subject of this particular paragraph of section 4 of the Vagrancy Ordinance, I would add a few observations on the meaning of "suspected person" in the hope that they will be of some general guidance.

In *Partap Singh* v. *R.*[1] Murray-Aynsley C.J. said:—

"It is very doubtful whether *Hartley* v. *Ellnor* [2] has much authority after the decision of *Ledwith* v *Roberts* [3] in spite of the opinion of the King's Bench Division in *Rawlings* v. *Smith.*[4] In *Ledwith* v. v. *Roberts* [3] one judge, Greer L.J. approved of *Hartley* v. *Ellnor.*[2] Another, Greene L.J. expressed disapproval. The third, Scott L.J. said (at p. 624):—

> 'I find it difficult to understand the court reaching that conclusion on the facts of that case, and on the whole I agree with Greene L.J. that it was wrongly decided.'

In any case I think that all the authorities are agreed that where all acts regarded as suspicious are related to one contemplated offence and one only they do not come within the scope of the sub-section. The facts alleged by the defence in *Ledwith* v. *Roberts* [3] were of this kind, but it was held that as a matter of law they did not justify the arrest of the plaintiffs as they would have done if they brought the matter within the sub-section."

Cases such as *Cohen & Anor.* v. *Black* [5] and *Pyburn* v. *Hudson* [6] do not appear to have been considered by the learned former Chief Justice but the facts in the case before him, as in *Ledwith* v. *Roberts,*[3] only pointed to one offence *i.e.* conspiracy to rob a particular house. The result might have been otherwise if there had been evidence of antecedent suspicious acts directed towards a number of houses generally.

The first of these two cases makes it clear that *Hartley* v. *Ellnor* [2] is still a binding authority, notwithstanding *Ledwith* v. *Roberts*[3] Oliver J. said:—

"The principles applicable to this case were laid down clearly upon the authority of that master of the criminal law, Avory J. in *Hartley* v. *Ellnor,*[2] at p. 201. It is unnecessary for me to read it, but he lays down quite distinctly first of all that there must be some antecedent evidence which brings the person charged with loitering into the category of being a suspected person. He may not be put into that category merely because some policeman seeing him loitering thinks that he is loitering with intent, but there must be some antecedent fact which brings him into the category of being a suspected person. Secondly, he lays it down that the antecedent conduct need not be on some antecedent day; it may be antecedent conduct on the same day. . . .

The facts of that case were that the person charged had been watched by two police officers for 40 minutes tapping the pockets of people who were getting on and off public vehicles, and it was held in the judgment that there was abundant evidence of different acts antecedent which brought him within the class of being a suspected person. That case stood uncriticised and unchallenged for 22 years, and then there came before the Court of Appeal *Ledwith* v. *Roberts,*[3] which has been referred to frequently in this case. The judgment in that case occupied a very considerable part of a volume of the Law Reports.

The facts of that case were utterly different, in our judgment, from the facts in the *Ellnor* [2] case. In that case two men had been observed, one inside a telephone kiosk doing something or other but not telephoning, and the other one outside, and upon the police having watched them for some 20 minutes one of the police officers went to effect an arrest; whereupon the man outside kicked the door and the man inside picked up the telephone receiver. Upon their failing to give any satisfactory account of being there they were charged as stated. As is pointed out in *Rawlings* v. *Smith* [4] by Lord Hewart L.C.J. there was in that case obviously only one transaction, and that fact, of course, completely differentiated the case in his opinion and in ours from the *Ellnor* [2] case".

In *Pyburn* v. *Hudson* [6] Lord Goddard C.J. said:—

"The true construction and application of the Vagrancy Act, 1824, has given rise to a series of cases. One especially, *Ledwith* v. *Roberts,*[3] has caused a good deal of difficulty to the police and will, I hope, some day be dealt with by legislation. That case laid down that to come within section 4 of the Act a person must be within the category of suspected persons before he does the act which immediately causes his arrest. I should be sorry to attempt to lay down that the acts which cause him to be a suspected person and the act which causes him to be arrested must be separated by any particular length of time. There have been many cases in which police have watched men who have gone round visiting car parks or cars left unattended in the street with the object either of driving away a car without the consent of the owner or of helping themselves to property in the cars. If they have acted thus for a length of time, or in such a way that the court thinks that they have by their conduct brought themselves within the category of suspected persons, it matters not whether their acts have been done a quarter of an hour, or half an hour, or, I would say, even five minutes before another act takes place which causes the constable to arrest them. But there must be some act bringing a man within the category of a suspected person, and that act must have occurred before he commits the act which causes his arrest. That seems to be the effect of *Ledwith* v. *Roberts,*[3] although that case is sometimes believed to have gone beyond that which this court has laid down it has decided."

A more recent case, *Cosh* v. *Isherwood,*[7] heard on 3rd November, 1967 is reported in the *Solicitors' Journal* of 24th November, 1967 as follows:—

"Salmon L.J. said that it was plain that before anyone could be convicted under section 4 it had to be shown that he had performed acts which aroused suspicion and that those acts must be different from the acts which must be relied on as loitering with intent to commit a felony. They must be different acts but they need not be different in kind. On the evidence before the recorder, C did do acts before the two men got out of their car which caused them to suspect that he was intending to drive a car away without the owner's consent or to help himself to something of value in a car. From the moment they got out of their car to follow him, it seemed inescapable that he was then a suspected person within the meaning of those words. He subsequently committed other acts, true, of a like nature and those were evidence that he was loitering with intent to commit a felony. The error into which the recorder fell was that he took into account only the evidence that related to what C was doing when he tried the Mini, then a car in front and then the Mini again. His lordship agreed that looking at that evidence by itself there was no evidence to support the charge, but it seemed that the recorder had not considered, as he should have, C's antecedent conduct. If he had, it was impossible to see that there was no dividing line between that antecedent conduct and what C did when he approached the Mini and immediately after. The obvious dividing line was when the two men got out of their car when C had done acts which amounted to being suspected and became thereafter a suspected person loitering with intent to commit a felony".

In the present appeal, the appellant, had the facts been so found positively by the magistrate could well have been a suspected person long before his loitering acts began which culminated in his arrest as he tampered with the door of the car concerned. P.W.1 (the police officer on anti-theft rounds) was keeping watch from a telephone booth over a car park in which were many parked cars. The time was 1.15 a.m. and there was no sign of movement of any kind in the area. He noticed the appellant's car, which he drove, arrive slowly and make a U-turn and return in the direction of the observer and then park. His companion walked away from the car but the appellant did not. The companion looked into every car and tried to open the doors of about 3 cars. He waved to the appellant, whereupon the appellant walked towards his companion and stopped to talk to him. He also looked into all the cars. The friend walked away. The appellant started meddling with the door of a car. The police officer moved forward stealthily and saw him with a screw driver in his hand at work over the car door. He declared himself.

If these facts had all been accepted without reservation it would have been possible to hold that some of his earlier acts revealed antecedent conduct which caused the police officer to regard him as a suspected person even before his acts of loitering with intent began. In my opinion, assuming these facts, he became a suspected person, at least at the stage when he left his car and walked towards his companion on receiving a signal from him. The companion was already suspected and what would be more natural than to suspect a person responding to another suspected person's signal in the particular circumstances?

It was when the appellant reached his companion and when he started looking into all the cars that his own acts of loitering with intent began.

I have tried to draw the dividing line between antecedent conduct which causes a person to be a suspected person and acts which amount to loitering with intent and this line is not always easy to draw. It may well be arguable that all his earlier acts merely show loitering with intent and that the appellant was never suspected until he brought out his screw driver in order to open the door. If that view is taken then of course no offence under the particular section of the Vagrancy Ordinance would have been committed. But that would, in my respectful opinion, be an untenable view.

I have set out portions of the judgments cited in some detail in order to show how different judges have approached the facts of their particular cases with a view to drawing the dividing line between the two sets of acts. If the lesson has been driven home that there is in fact such a dividing line which magistrates should learn to draw, if they can, that will be my sufficient reward for having inflicted this lengthy judgment on them. Without intending to repeat myself *ad nauseam* I would add that each case depends on its own particular facts which must be scrutinised with the utmost circumspection and care to see whether a dividing line can be drawn.

In the present appeal the facts, if accepted, can be separated into antecedent acts which caused the appellant to fall into the category of suspected person before the acts which caused his arrest began. Unfortunately the magistrate's findings on the facts of the case as a whole are not as clear as they ought to be having regard to the standard of proof required in criminal cases. I am therefore left in considerable doubt as to what his answer would have been if he had asked himself the question, "Am I satisfied beyond reasonable doubt on the whole of the evidence in this case that the accused committed the offence charged?" The record seems to show that he only considered it more probable that the appellant was guilty.

The appeal is accordingly allowed on the first ground set out earlier in this judgment, the conviction quashed and the sentence set aside. The fine of $50 which has been paid will be refunded. It follows that the order for forfeiture of the car used by the appellant cannot stand and is accordingly quashed.

Appeal allowed.